

MUR # 7391



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

May 15, 2018

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, D.C. 20463

2018 MAY 23 AM 11:50

OFFICE OF
GENERAL COUNSEL

Re: Complaint against DCCC and Jason Crow

Dear Counsel,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We achieve this mission by hanging a lantern over public officials who put their own interests over the interests of the public good.

We submit this complaint¹ to request the Federal Election Commission (Commission) investigate and take appropriate enforcement action to address apparent violations of the Federal Election Campaign Act (Act) and Commission regulations by the Democratic Congressional Campaign Committee (DCCC)² and candidate Jason Crow and his campaign committee Jason Crow for Congress.³ The information contained in this complaint is based upon information and belief, including recorded and reported statements that indicate the DCCC gave and Crow accepted in-kind donations of polling information, mailing lists, and other resources to influence a Colorado House primary race. Based upon the industry standard, the value of the polling information and mailing lists likely exceeded the \$5,000 limit on in-kind contributions. Neither the DCCC nor Crow reported the contributions in an apparent violation of federal law. The Commission must immediately investigate and enforce the law.⁴

¹ This complaint is submitted pursuant to 52 U.S.C. § 30109(a)(1).

² Democratic Congressional Campaign Committee, 430 South Capitol Street SE, 2nd Floor, Washington, DC, 20003.

³ Jason Crow for Congress, PO Box 32145, Aurora, CO, 80041.

⁴ "If the Commission, upon receiving a complaint . . . has reason to believe that a person has committed, or is about to commit, a violation of [Act] . . . [t]he Commission shall make an investigation of such alleged violation." 52 U.S.C. § 30109(a)(2); 11 C.F.R. § 111.4(a).

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The DCCC reportedly picked Crow as its preferred candidate to win the 2018 Colorado House primary race and took action to assist its favored candidate.⁵ According to a recorded conversation between Democratic leader House Minority Whip Steny Hoyer and another primary candidate, the DCCC supported Crow and requested the opposing candidate "leave the race multiple times and make way for Crow."⁶ Other candidates also reported that the DCCC did not provide them with the same resources it provided to Crow. One stated that the DCCC gave "polling data . . . to Crow. They made other resources available to Crow that they did not make available to me, such as email-lists for fundraising purposes."⁷

Under federal law, a national party committee may assist a candidate by: (1) giving contributions that do not exceed \$5,000 during the primary and general election;⁸ and (2) coordinated party expenditures during the general election. A contribution is not limited to cash contributions, but also includes in-kind contributions⁹ of "anything of value . . . for the purpose of influencing any election for Federal office."¹⁰ One example of an in-kind contribution is polling information,¹¹ which includes information obtained from conducting the poll, "data and analysis of the results," and advice made to a campaign with knowledge of a poll on "matters such as campaign strategy or creating media messages."¹² Another example of an in-kind contribution is mailing lists.¹³ In-kind contributions, which are restricted to a total value of \$5,000, must be reported by both the party committee and the candidate.¹⁴

In the present case, it is clear the DCCC sought to influence the primary election and gave in-kind contributions to Crow to support his primary race. The DCCC requested other candidates drop out of the primary race and only provided valuable resources to Crow to assist his primary campaign. Two of the resources the DCCC reportedly gave to Crow were polling information and mailing lists, which are in-kind donations. Moreover, the value of all the in-kind donations cannot exceed \$5,000, which would likely have been violated by these types of in-kind contributions.¹⁵ Whether or not the contributions exceeded the permissible amount is unknown, however, since neither the DCCC nor Crow reported it as required by federal law.

⁵ David Weigel and Erica Werner, *Nancy Pelosi defends Democrats' intervention in Colorado primary race between Levi Tillemann and Jason Crow*, The Denver Post, Apr. 26, 2018 (attached as Exhibit B).

⁶ Lee Fang, *Secretly Taped Audio Reveals Democratic Leadership Pressuring Progressive to Leave Race*, the Intercept, Apr. 26, 2018 (attached as Exhibit A).

⁷ *Id.*

⁸ 52 U.S.C. § 30116.

⁹ 11 C.F.R. § 100.52(d).

¹⁰ 52 U.S.C. § 30101(8)(A)(i).

¹¹ The purchase of opinion poll results by a political committee, and the subsequent acceptance of the poll results by a candidate, is an in-kind contribution from the purchaser to the candidate. 11 C.F.R. § 106.4(b). "[P]oll results are accepted . . . if the candidate, or the candidate's authorized political committee, or agent . . . (1) Requested the poll results before their receipt; (2) Uses the poll results; or (3) Does not notify the contributor that the results are refused." *Id.*

¹² Federal Election Commission, AO 1990-12 (Aug. 3, 1990).

¹³ "Examples of such goods or services include, but are not limited to: Securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists." 11 C.F.R. § 100.52(c).

¹⁴ 52 U.S.C. § 30104(b); 11 C.F.R. § 104.3.

¹⁵ 52 U.S.C. § 30116.

The Commission should conduct an immediate and thorough investigation into these allegations to determine if the DCCC made an illegal contribution to a candidate and whether the DCCC and Crow failed to report contributions in violation of the Act. If the Commission finds a violation of the Act occurred, it must hold both the Jason Crow for Congress campaign committee and the DCCC accountable.

Respectfully submitted,

K Arnold

Kendra Arnold, Executive Director
Foundation for Accountability & Civic Trust
1717 K Street NW, Suite 900
Washington, D.C. 20006

State of MN)
County of Hennepin) ss.
)

Subscribed and sworn to before me on May, 15th, 2018.



Kamara S. Hopkins-Bluhm Notary Public
My Commission Expires: 1-31-2020

Exhibit A

**The
Intercept**

SECRETLY TAPED AUDIO REVEALS DEMOCRATIC LEADERSHIP PRESSURING PROGRESSIVE TO LEAVE RACE

Lee Fang

April 26 2018, 5:00 a.m.



In partnership with

THE NIB

Steny Hoyer, the No. 2 Democrat in the House of Representatives, has for years been a prolific campaigner on behalf of current and potential members of Congress. It was no surprise, then, that December found him in Colorado, where the party has hopes of knocking off Republican incumbent Mike Coffman.

Before Donald Trump had even been inaugurated, local resistance groups began deluging Coffman's public appearances, pressing him not to repeal the Affordable Care Act, and putting him back on his political heels. Levi Tillemann, an author, inventor, and former official with the Obama administration's Energy Department, moved back

home to make a run against Coffman.

He focused his campaign on clean elections, combatting climate change, "Medicare for All," free community college, and confronting economic inequality and monopoly power. Another candidate for the nomination, Jason Crow, a corporate lawyer at the powerhouse Colorado firm Holland & Hart and an Army veteran, meanwhile, appeared to have the backing of the Democratic establishment, though it wasn't explicit. In November, it became clearer, as Crow was named by the Democratic Congressional Campaign Committee to the party's "Red to Blue" list, which the committee specifies is not an endorsement but does carry symbolic weight.

With Hoyer in Denver, Tillemann met the minority whip at the Hilton Denver Downtown to make the case that the party should stay neutral in the primary and that he had a more plausible path to victory than the same centrism that Coffman had already beaten repeatedly.

Hoyer, however, had his own message he wanted to convey: Tillemann should drop out.

In a frank and wide-ranging conversation, Hoyer laid down the law for Tillemann. The decision, Tillemann was told, had been made long ago. It wasn't personal, Hoyer insisted, and there was nothing uniquely unfair being done to Tillemann, he explained: This is how the party does it everywhere.

Tillemann had heard the argument before from D.C. insiders and local Democratic bigwigs, all of whom had discouraged him from chal-

lenging the establishment favorite. The only difference was that for this conversation, the candidate had his phone set to record.

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The secretly taped audio recording, released here for the first time, reveals how senior Democratic officials have worked to crush competitive primaries and steer political resources, money, and other support to hand-picked candidates in key races across the country, long before the party publicly announces a preference. The invisible assistance boosts the preferred candidate in fundraising and endorsements, and then that fundraising success and those endorsements are used to justify national party support. Meanwhile, opponents of the party's unspoken pick are driven into paranoia, wondering if they are merely imagining that unseen hands are working against them.

Hoyer bluntly told Tillemann that it wasn't his imagination, and that mobilizing support for one Democratic candidate over another in a primary isn't unusual. Rep. Ben Ray Luján, D-N.M., chair of the DCCC, has a "policy that early on, we'd try to agree on a candidate who we thought could win the general and give the candidate all the help we could give them," Hoyer told Tillemann matter-of-factly.

"Yeah, I'm for Crow," Hoyer explained. "I am for Crow because a judgment was made very early on. I didn't know Crow. I didn't participate in the decision. But a decision was made early on by the Colorado delegation," he said, referencing the three House Democrats elected

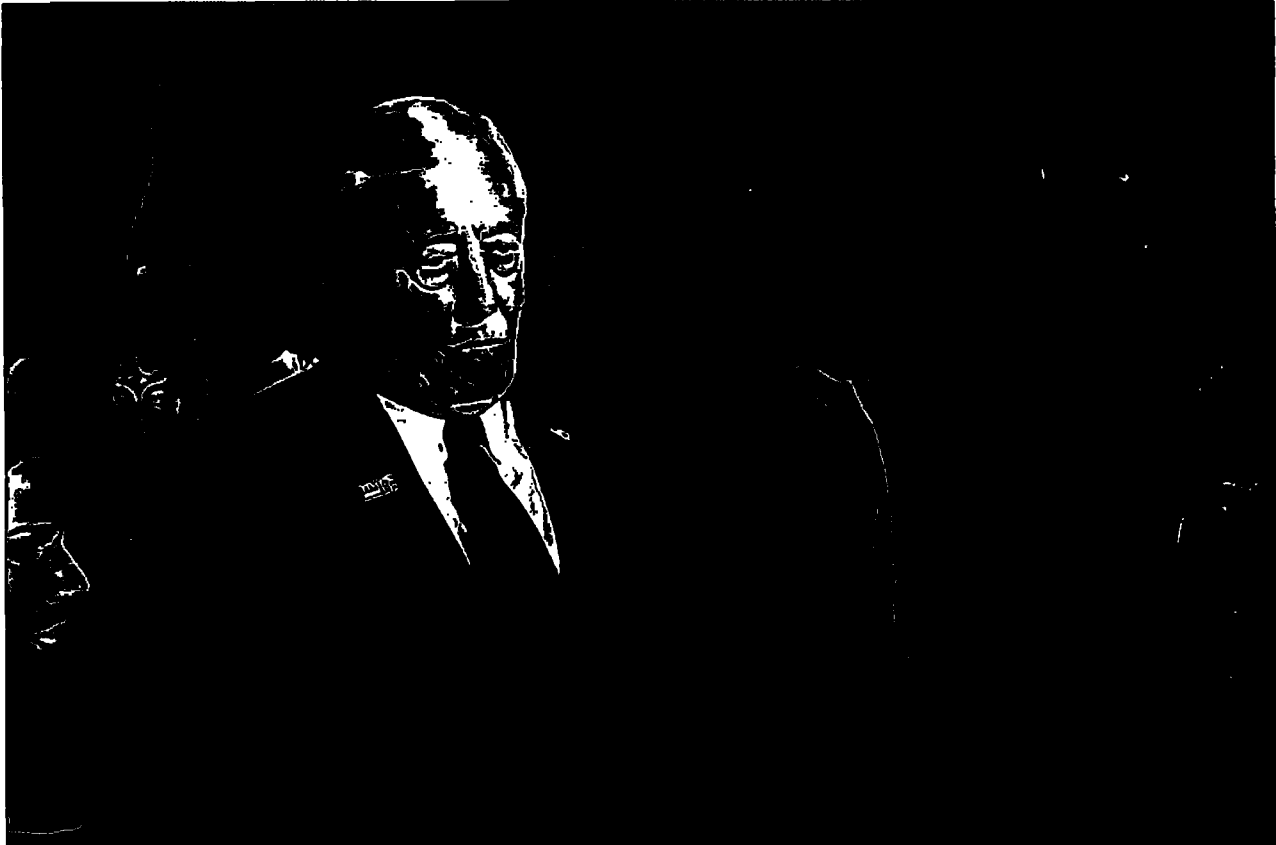
from Colorado.

“So your position is, a decision was made very early on before voters had a say, and that’s fine because the DCCC knows better than the voters of the 6th Congressional District, and we should line up behind that candidate,” asked Tillemann during the conversation.

“That’s certainly a consequence of our decision,” responded Hoyer.

“Staying out of primaries sounds small-D democratic, very intellectual, and very interesting,” said Hoyer. “But if you stay out of primaries, and somebody wins in the primary who can’t possibly win in the general,” the Maryland representative said, citing the surprise victory of Democrat Doug Jones over Republican Roy Moore in the Alabama Senate election, “I’m not saying you’re that person.” But staying out of primaries, he argued, is “not very smart strategy.”

Before agreeing to provide the audio, Tillemann requested that personal details be withheld. The Intercept selected the newsworthy aspects of the recording for publication.



House Minority Whip Steny Hoyer, D-Md., leaves the House of Representatives chamber after President Donald Trump's first State of the Union Address before a joint session of Congress on Jan. 30, 2018 in Washington, D.C. Photo: Pete Marovich/Getty Images

During the conversation, Hoyer asked Tillemann to leave the race multiple times and make way for Crow. "You keep saying I would like you to get out of the race, and of course that's correct," Hoyer said, adding that he hoped Tillemann would refrain from criticizing the party's chosen candidate if he decided to stay in.

The party, notably, has a poor track record in selecting candidates that can win the general election.

In 2006, the last cycle viewed as a wave midterm election for Democrats, the DCCC famously became heavily involved in Democratic pri-

maries. In that election, just as in 2018, the party attempted to pick moderate, business-friendly veterans, while nudging left-leaning candidates out of the election. But some of the party's chosen primary candidates ended up losing, and several candidates viewed as too progressive to win the general in Republican-held districts – such as John Hall, Carol Shea-Porter, and Jerry McNerney – went on to win that election with little to no DCCC support.

The suggestion that Tillemann might end up being a spoiler like Roy Moore, an extremist with a history of soliciting minors, may seem far-fetched.

Tillemann, while studying for his Ph.D., founded an energy efficient engine design company, and in 2012, was appointed by President Barack Obama to advise the Energy Department. Though he has positioned himself as a grassroots populist aligned with local resistance activist groups, if anything he is simultaneously a legacy of the Democratic establishment, as the grandson of the late Rep. Tom Lantos, D-Calif., on his mother's side and the grandson of former Colorado Lt. Gov. Nancy Dick on his father's side. He grew up in a working-class neighborhood of Denver. He also speaks Chinese, Spanish, Portuguese, and Japanese – an asset, he says, for the rapidly diversifying 6th District.

Crow spoke at the 2012 Democratic National Convention to support the repeal of the military's "Don't Ask, Don't Tell" policy. He previously served on the Colorado Board of Veterans Affairs and advised both the Obama administration and former Colorado Gov. John Hick-enlooper on veterans issues. Crow's first television advertisement fo-

cuses on Coffman's support from the gun lobby, but conservatives have fired back to note that Crow's law firm lobbies against gun control on behalf of gun manufacturers in Colorado.

Crow's work representing corporations accused of misconduct may become a liability in the campaign. Legal filings list Crow's name on lawsuits defending payday lender Western Sky Financial and fracking firm Slawson Exploration.

In races in Pennsylvania, Minnesota, Texas, Nebraska, California, and beyond, progressive candidates are finding that the DCCC has mobilized support for moderate candidates with access to early campaign cash at the expense of progressives. As we've reported, many first-time candidates are told by the DCCC that before they can even be considered, they have to perform the "rolodex" test to show they can raise \$250,000 or more from the contact list on their phone.

In February, the DCCC made the unusual move to release opposition research, the term of art for political dirt, against activist Laura Moser, who the party viewed as too liberal to win in the 7th Congressional District of Texas, a Houston-area seat. The strategy, however, appeared to backfire. Moser placed second in the Texas Democratic primary, meaning she'll have a shot at the nomination in the May 22 runoff.

Tillemann says the decision to record the conversation came after months of hints that party officials did not want him as the candidate. Though he notified the party of his intention to run, he had trouble gaining an audience with senior DCCC officials, obtaining

polling data promised by the DCCC, or even gaining access to resumes of Democratic campaign staff. The party continued to promise neutrality while inviting only Crow to a candidate training seminar, Tillemann alleges.

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In February of last year, Tillemann reached out over email to DCCC officials as he explored a bid and maintained contact with party staff through the launch of his campaign; he says he was continually stonewalled as he sought candidate resources. Nearly six months after the initial contact, with Tillemann's internal complaints growing more forceful, the party committee offered some perfunctory assistance in exchange for access to details about campaign financials and organizing. The offer came after a heated exchange between Tillemann and a DCCC official at a campaign event, in which Tillemann argued that the party was more interested in boosting Crow than beating Coffman.

While the DCCC still promised neutrality, publicly disclosed campaign donations confirmed Tillemann's suspicions. In June 2017, a political action committee controlled by Luján, the DCCC chair, donated \$1,000 to Crow. That month, PACs controlled by Hoyer also donated two checks for a combined total of \$2,000 to Crow.

"We were put in a situation time and time again where what was communicated to us behind closed doors and what was communicated to the public was at odds," says Tillemann of his decision to tape the conversation with Hoyer. "The breach of personal decorum," Tillemann adds, "was much less important than the fundamental principle at stake in our democracy in 2018."

Mariel Saez, a spokesperson for Hoyer, said that “we do not comment on private meetings. Mr. Hoyer supports Crow and donated to him last year, but he hasn’t engaged in the race since then.” Crow did not respond to a request for comment, and the DCCC declined to comment.



Entrepreneur Levi Tillemann speaking at the Bloomberg New Energy Finance Future of Energy Summit in New York, on April 5, 2016. Photo: Michael Nagle/Bloomberg via Getty Images

But the dynamics described in the audio tape and by Tillemann resonated with other former candidates in the district.

“The party did not give me the resources that they gave Jason Crow,”

says David Aarestad, an attorney who had been running for the nomination for the 6th District. Aarestad dropped out of the race in March and endorsed Crow.

“It was the D-trip. I was given extensive promises in March of last year that they would not do anything to favor one candidate over another, that they had learned from the mistakes made during the Bernie-Hillary fallout, and that they would do everything the same for all of the candidates,” says Aarestad. “But, they made polling data available to Crow that they did not make available to me. They made other resources available to Crow that they did not make available to me, such as email lists for fundraising purposes.”

Gabriel McArthur, another former candidate for the 6th District, says the DCCC never contacted him, even though he was the first candidate to enter the race. He says the party exercises influence not just over candidate selection, but how political money and media coverage operates in the state. McArthur says he had the most detailed policies on his campaign website, but could never gain serious media coverage for his race. While Crow for much of last year had no issues page on his campaign website, McArthur noted that the establishment favorite appeared to easily win endorsement after endorsement from local liberal groups and politicians along with fawning coverage from local media.

“Jason Crow has been hoisted up as the chosen candidate the entire time. The party officers say we need centrists to win against Mike Coffman, that’s just the way it is,” says McArthur, a former Bernie Sanders delegate to the 2016 Democratic National Convention.

Democratic consultants, McArthur says, have told him to focus more on fundraising than publicizing his policy agenda. "The money isn't the real problem – the problem is that the Democrats lack any real agenda," says McArthur.

When the DCCC publicly added Crow to its "Red to Blue" list of front-line candidates in November, the move further embittered local Colorado Democrats who had been assured the party was remaining neutral in the primary. State Party Chair Morgan Carroll, the Democratic nominee in the 6th District in 2016, wrote on Facebook, "The DCCC verbally said they would be neutral and in practice just endorsed one of the candidates in CD6."

The suburban district is being widely watched as one of the most important seats Democrats need to flip to regain the majority. Obama won the district in 2012 by 5 percentage points, and Hillary Clinton won it by 9 percent in 2016. But the incumbent, Coffman, has proved resilient, winning crossover votes by projecting a moderate image. He defeated Democratic challengers in the last two election cycles by a wide margin.

Hoyer has for years been a mainstay of House Democratic leadership, tantalizingly close to the speakership. Soon after being elected to Congress in 1981, he became a protégé of then-Rep. Tony Coelho, D-Calif., a business-friendly lawmaker who had just become chair of the DCCC. Coelho famously transformed the DCCC into the big-money operation it is today, rebuking the Democratic Party's longstanding alliance with labor unions and activists in favor of raising millions of dollars from corporate lobbyists.

Under Coelho, one DCCC brochure assured donors “courteous and direct access to” Democratic lawmakers. The DCCC encouraged candidates to focus on raising cash from corporate PACs and building relationships with business executives as the easiest path to office. Coelho resigned in 1989 following an ethics scandal, but not before giving a boost to Hoyer, his lieutenant who was quickly rising through the ranks of leadership.

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Hoyer, exploiting his own role as the caucus point person for K Street, won the election as House Democratic whip in 2002. According to reports in Roll Call and the Washington Post, Hoyer regularly invites corporate lobbyists for weekly lunches with the caucus and helps to headline private donor retreats for the party. During the 2006 midterms, he worked closely with the DCCC to raise prodigious sums of corporate PAC cash for party election efforts, further cementing his role as a power player in the party.

For the 2018 midterm cycle, the party has not only courted moderate Democrats and formed a renewed partnership with the conservative Blue Dog caucus for candidate recruitment, but has discouraged candidates from embracing populist ideas, such as single-payer health care.

For Tillemann, however, the party’s closeness with the corporate elite is the very reason why the DCCC continues to lose general elections.

“They squash progressive candidates. They destroy the diversity of ideas in their caucus. They keep ideas like ‘Medicare for All,’ free community college, or impeaching Donald Trump from having a sig-

nificant role in the national conversation,” says Tillemann. “The issues that resonate most with voters are not the issues that the DCCC is telling candidates to focus on.”

Is he worried that even if he is successful in his campaign, that he’s already betrayed one of the most powerful Democrats, making him an outsider as soon as he arrives in Washington?

“To a certain extent, people like Elizabeth Warren and people like Bernie Sanders have been ostracized by the party, and they have been marginalized by the establishment to the extent that is possible,” says Tillemann. “But the fact of the matter is that the people are crying out for genuine leaders, and the people are crying out for a solution to inequality and systemic injustice, and to the extent that I am fighting for those solutions, then I think there will be a powerful constituency for that.”

“I’m proud to be on the side of truth,” he added. “I’m proud to be on the right side of democracy, and I’m proud to be on the right side of free and fair elections.”

The video was produced by The Intercept’s Travis Mannon and Lauren Feeney, and narrated by The Intercept’s Elise Swain. Illustrations by Matt Lubchansky, associate editor of The Nib.



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RELATED

Exhibit B

Nancy Pelosi defends Democrats' intervention in Colorado primary race between Levi Tillemann and Jason Crow

Released audiotape documents U.S. House Democratic leader Steny Hoyer telling Levi Tillemann that the party was backing Jason Crow

By David Weigel and Erica Werner | The Washington Post

April 26, 2018 at 12:37 pm



Photo by Kathryn Scott/The Denver Post; AP file photo

House Democratic leader Nancy Pelosi (right) on Thursday defended her party's intervention in Colorado's 6th Congressional District primary, in which it favored Jason Crow over Levi Tillemann (left).

WASHINGTON — House Democratic leader Nancy Pelosi defended her

party's electoral operation Thursday, after a candidate in a contested Colorado primary released audiotape of Democratic Whip Steny Hoyer urging him to quit the race.

"I don't know that a person can tape a person without the person's consent and then release it to the press," the California Democrat told reporters at her weekly news conference. "In terms of candidates and campaigns I don't see anything inappropriate in what Mr. Hoyer was engaged in – a conversation about the realities of life in the race as to who can make the general election."

Thursday's controversy began when The Intercept released audio of a December 2017 meeting between Hoyer and Levi Tillemann, a green energy entrepreneur running for the Democratic nomination in Colorado's 6th Congressional District. The Democratic-trending district, one of 23 that elected a Republican to the House while backing Hillary Clinton for president, is one of the party's top targets in November's midterm elections.

The Democratic Congressional Campaign Committee has thrown its weight in the race behind Jason Crow, an attorney and veteran running a more center-left campaign than Tillemann, who supports universal Medicare and other planks of Sen. Bernie Sanders', I-Vt., campaign platform. In the December conversation, Hoyer told Tillemann that "a decision was made early on by the Colorado delegation" to back Crow, and that it would continue to do so.

"Staying out of primaries sounds small-D democratic, very intellectual, and very interesting," said Hoyer, according to the tape. "But it was clear that it was our policy and our hope that, early on, try to come to an agreement on a candidate that we thought could win the general, and to give that candidate all the help we could give them."

This isn't the first time that Tillemann's reached out to reporters with details of the Hoyer meeting. In January, Colorado Politics obtained "detailed notes"

from the meeting's aftermath, and reported that Washington Democrats had urged Tillemann to leave the race and leave a runway open for Crow.

"If you stay in the race – and, frankly I would hope you would not – but if you stay in the race, it is not useful to the objective to tear down Crow," Hoyer told Tillemann, according to both the notes released in January and the audio released this week.

That story raised eyebrows among Democratic activists; one month later, the DCCC waded into a larger national controversy by releasing opposition research on Laura Moser, a candidate in Texas' 7th congressional district, and warned that she had made gaffes that would make her unelectable if she won the party's nomination.



Kathryn Scott, The Denver Post

Democratic candidate Jason Crow, who is running to unseat U.S. Rep. Mike Coffman, answers question from the audience at an April 7, 2018, town hall about gun violence in Highlands Ranch.

The Moser controversy, which did not stop Moser from securing a spot in the May 22 runoff, kicked off a wave of negative stories, with Democrats who felt pushed aside by the DCCC dishing to reporters and sharing details of meetings. Greg Edwards, a candidate in Pennsylvania's 7th district, told the Post last month about the DCCC's local operative urging him to quit his race and run for state Senate. Kara Eastman, a candidate in May 15's primary for Omaha's 2nd congressional district, also cried foul when the DCCC backed former congressman Brad Ashford's comeback bid over her insurgent campaign.

All of that has amped up liberal criticism of the DCCC, which has long intervened in party primaries – but never in a year with so many challengers. After the Intercept's story ran, the Progressive Change Campaign Committee emailed its donors to raise money for Tillemann.

"Please donate \$3 to 3 progressives the DCCC is trying to defeat in upcoming primaries by putting their finger on the scale for corporate Democrats," the email read.

The National Republican Congressional Committee, the DCCC's counterpoint, has gleefully sent each example of activist/DCCC strife to reporters. The DCCC's greatest test of the cycle is just weeks away, in a series of California primaries where the state's top-two runoff system could lock Democrats out of the general election, if they split the vote between too many candidates.

"The level of distrust between the progressive community and House Democratic leadership is at an all-time high," NRCC spokesman Jesse Hunt wrote in a Thursday email that shared the Tillemann story. "Get ready for the DCCC to become even more toxic in Democratic primaries."

Pelosi, who has raised millions in this cycle for both individual candidates and the DCCC, said that the candidates who complained about party intervention needed to focus on the prize – control of the House.

"What's important in all of this is that one in five children in America lives in poverty goes to sleep hungry," said Pelosi. "That's what makes this election so urgent, for our children. So if the reality is that some candidates can get into the general [more] than others, then that's a clear-eyes conversation."